**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1936 OF 2006**

Ms. Vijaya Bharat Gaikwad ..... Appellant

Versus

Bharat Sudamrao Gaikwad ..... Respondent.

Ms. Sumedha Rao for the Appellant.
Mr. Milind Deshmukh for the Respondent.

**CORAM : S.B. DESHMUKH, J.**

DATE : 10TH OCTOBER, 2006

P.C.

1) Not on board. Mentioned. Taken on board.

2) Heard learned Counsel for the parties. Perused the order passed by learned 5th Additional District Judge, Pune in Civil Miscellaneous Application No. 52 of 2005 dtd. 3rd July 2006. I have also perused the order passed by me on 4th October 2006. Despite the order passed by this Court on 4th October 2006, the learned Counsel for the Appellant submits, that matter is not listed on today’s cause list.

2) The learned Counsel for the Appellant has invited my attention on Paragraph 5 of the Judgment of

the learned 5th Additional District Judge, Pune. It appears that present Appellant Smt. Vijaya Gaikwad, has not participated in Civil Miscellaneous Application No. 52 of 2005 and ultimately said application was allowed by the Trial Court.

3) Having heard the learned Counsel for the parties, in my view, case for admission of the Appeal is established.

4) Admit.

5) With the consent of the Counsel appearing for the parties, Appeal is taken up for hearing finally. In my view order passed by the Trial Court can be set aside and matter can be remanded back to the Trial Court for disposal according to law.

6) In the result, Appeal is partly allowed. The Judgment and order passed by the learned 5th Additional District Judge, Pune in Civil Miscellaneous Application No. 52 of 2005 is quashed and set aside. Matter is remanded to the learned 5th Additional District Judge,Pune for disposal according to law. All contentions of both the parties, are left open to be agitated before the Trial Court.

7) The Appellant and Respondent are directed to appear on 6th November 2006 before learned Additional

District Judge, Pune. The Trial Court shall decide the appeal expeditiously and on or before 30th April 2007.

8) Advocate for the Appellant on the instructions from the Appellant who is present in the Court undertakes to co-operate with the hearing of the matter.

9) No costs.

**( S.B. DESHMUKH, J.)**